

SEP 26 1991

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No. 91-335

In The
Supreme Court of the United States
October Term, 1991

RANDALL A. DETRO,

Petitioner,

v.

BUDDY ROEMER, et al.,

Respondents.

**Opposition To Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

**OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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STATEMENT OF THE CASE

The statement of the case offered by the Petition omits several important and uncontradicted facts which the Court should consider.

As is reflected in the opinion of the Court below (the relevant passages appearing on Pages 4A and 5A of the Petition for Writ of Certiorari) Plaintiff Detro was present when the materials in his office and the adjoining room were inventoried and was afforded an opportunity to establish ownership of the items in his office. When he could establish ownership, he was permitted to take the

items with him. Plaintiff Detro has failed to identify any particular items still under seizure and has only alleged in conclusory terms that he has been deprived of his personal property. To this day, Plaintiff Detro has failed to identify any item of property which remains under seizure in spite of the fact that this deficiency has been repeatedly pointed out during these proceedings.

ARGUMENT

1.

WHAT IS THE APPROPRIATE FOURTH AMENDMENT STANDARD FOR SEIZURES MADE PURSUANT TO A WARRANTLESS WORKPLACE SEARCH?

In order for the resolution of this question to be relevant to this case, there must have been some seizure of property belonging to Plaintiff Detro. On the contrary, as is noted above, there is no evidence of the seizure of any property belonging to Plaintiff Detro. Plaintiff Detro has failed to identify a single item of personal property which was seized or remains under seizure. The uncontradicted evidence establishes that he was afforded an opportunity to establish ownership of items and when he did they were returned to him. For this reason, the Fifth Circuit found it unnecessary to address the arguments concerning the seizure of his property constituting a "continuing violation." The argued distinctions between a "search" and a "seizure" are therefore irrelevant.

2.

WAS PETITIONER'S COMPLAINT FILED TIMELY UNDER 42 U.S.C 1983?

The Petitioner Randall A. Detro filed a complaint under 42 U.S.C. 1983. At the onset, it is important to note that by order and reasons filed March 26, 1990, the Trial Court dismissed Plaintiff's claim for denial of a name clearing hearing because the complaint failed to state a claim upon which any relief could be granted. Plaintiff Detro failed to assert that he ever requested such a hearing. Plaintiff Detro has never alleged or asserted at any time that he requested a hearing. The Order and Reasons filed March 26, 1990, has not been appealed and is final. Other than Plaintiff's replacement as Director of the Nicholls State University Library by Nicholls State University and the alleged continuing seizure of Plaintiff's property, all acts about which Plaintiff Detro has complained in these proceedings occurred more than a year prior to the commencement of this litigation. The inventory of the property in Plaintiff's office occurred approximately seventeen months prior to the filing of the suit. Plaintiff Detro relies upon the concept of a "continuing violation" and asserts the case of *Delaware State College v. Ricks*, 449 U.S. 250, 66 L.Ed.2d 431, 101 S.Ct 498 (1980) somehow constitutes precedent for this position. A review of that case shows that on the contrary, the *Delaware State College* case is contra Plaintiff's position.

First, *Delaware State College* is a discrimination case. While Plaintiff Detro, at one point, apparently contended that librarians should be a protected class under 42 U.S.C 1985 no such claim is presented here. The instant case is

more analogous to "police action" cases using the broader definition of that term.

Even in a discrimination case, *Delaware State College* stands for the proposition that the wrongful actions must occur within the Statute of Limitations in order to prevent a tolling of the Statute of Limitations.

There also was no "continuing wrong" if this concept had any relevance.

Plaintiff Detro asserts that there were underlying violations of the Fourth and Sixth Amendments which led to his removal as Director of the library. After careful review, the Court below concluded that the padlocking and inventorying of Plaintiff's office were reasonable actions and therefore, there was nothing to constitute a "continuing violation." With the exception of the contention concerning continuing seizure of his property, Plaintiff Detro does not contest the conclusion of the Court below that the inventory of the contents of his office was reasonable.

3.

WAS SUMMARY JUDGMENT PROPERLY GRANTED BEFORE OPPORTUNITY FOR DISCOVERY AND WHEN GENUINE ISSUES OF MATERIAL FACT EXISTED?

Addressing these propositions in reverse order, Plaintiff Detro contends that the Court below overlooked genuine issues of material fact concerning the search and seizure but fails to identify the issues. Plaintiff's contentions concerning the denial of opportunity for discovery,

raised for the first time in this Court, flies in the face of the established policy of the Federal Courts to prohibit litigants from using litigation to harass state officials as they make the tough decisions required of them. This Court, in the case of *Harlow v. Fitzgerald*, 457 U.S. 800, 73 L.Ed.2d 396, 102 S.Ct. 27 (1982) recognize the need to protect government officials both from the cost of trial and the burdens of broad reaching discovery. Plaintiff Detro filed a complaint accusing the Governor, the Inspector General and three auditors with the Inspector General's Office of falsely imprisoning him, converting his property, denying his right to an attorney, discriminating against him and slandering him. The Trial Court held Plaintiff's claims time barred, there being no disputed fact but that whatever events occurred happened beyond the Statute of Limitations. The Fifth Circuit concurred, but further reviewed the record in addressing Plaintiff's continuing violation "theory" and found an absence of factual basis to provide even minimal support that any of the events occurred.

There is a chilling effect when state officials are sued personally in Federal Court. That chilling effect is perhaps greatest on the Civil Service auditors who are the front line in finding and eliminating waste and cronyism in government. These public servants should be protected even from the burdens of discovery where there is no factual basis to support a claim against them.



CONCLUSION

For the reasons set forth above the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

Respectively submitted,

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